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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 BILLY D. FOWLER,

10 Petitioner,

11 v.

12 MAGGIE MILLER-STOUT,

13 Respondent.  
14

Case No. C07-5356RJB

ORDER DENYING CERTIFICATE  
OF APPEALABILITY

15 This matter comes before the court on the petitioner's Petition for Issuance of Certificate of  
16 Appealability. Dkt. 41. The court must consider whether to grant or deny the petitioner a Certificate  
17 of Appealability. *See* 28 U.S.C. 2253(c)(3). The court has reviewed the record herein.

18 PROCEDURAL HISTORY

19 On May 29, 2008, U.S. Magistrate Judge Karen L. Strombom issued a Report and  
20 Recommendation, recommending that the petition be denied. Dkt. 37. On June 30, 2008, after  
21 reviewing the record, including petitioner's objections to the Report and Recommendation, the court  
22 adopted the Report and Recommendation and denied the petition for writ of habeas corpus. Dkt. 40.

23 On July 11, 2008, petitioner filed a notice of appeal and a Petition for Issuance of [a]  
24 Certificate of Appealability. Dkt. 41. Petitioner contends that (1) his right to due process was  
25 violated by an illegal search of his vehicle and evidence that was obtained by the illegal search; (2) his  
26 Order- 1;

1 right to a fair trial was violated when the State failed to sever counts and evidence of similar bad acts  
2 was presented; (3) his right to due process was violated when the State failed to provide discovery  
3 related to the Special Inquiry process and when altered affidavits were provided to him nearly two  
4 years after trial commenced; and (4) he was prejudiced by the discovery violations. Dkt. 41.

#### 5 STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

6 The district court should grant an application for a Certificate of Appealability only if the  
7 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
8 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner  
9 must make a showing that reasonable jurists could debate whether, or agree that, the petition should  
10 have been resolved in a different manner or that the issues presented were adequate to deserve  
11 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (*quoting*  
12 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on  
13 procedural grounds, the petitioner must show that jurists of reason would find it debatable whether  
14 the petition states a valid claim of the denial of a constitutional right and that jurists of reason would  
15 find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*,  
16 120 S.Ct. at 1604.

#### 17 DISCUSSION


18 In his request for a Certificate of Appealability, petitioner raises the same claims that were  
19 carefully reviewed by the magistrate judge, and by this court on *de novo* review. Petitioner has not  
20 shown that reasonable jurists could debate whether, or agree that, the petition should have been  
21 resolved in a different manner or that the issues presented were adequate to deserve encouragement  
22 to proceed further. The petition for a Certificate of Appealability should be denied.

23 Accordingly, it is hereby **ORDERED** that the Petition for [a] Certificate of Appealability  
24 (Dkt. 41) is **DENIED**.

25 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to  
26 Order- 2;

1 any party appearing *pro se* at said party's last known address.

2 DATED this 5<sup>th</sup> of August, 2008.

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5 ROBERT J. BRYAN  
6 United States District Judge  
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